

Cce Vs. Ludhiana Steel Ltd.

Cce Vs. Ludhiana Steel Ltd.

SooperKanoon Citation : sooperkanoon.com/18485

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-2000

Reported in : (2000)(70)ECC435

Judge : A T V.K.

Appellant : Cce

Respondent : Ludhiana Steel Ltd.

Judgement :

1. This is a reference application filed by Commissioner Central Excise, for referring the following question of law arising out of Tribunal Final Order No. A/548-550/ 98-NB dated 4.5.1998.

(i) "Whether the legal requirements of Rule 57G is met by the manufacturer who submits a declaration describing inputs as melting scrap but takes credit on inputs described in the covering documents as strips below 5 mm in thickness, round cuttings, bars, hooks and CR end cuttings?." (ii) "Whether the declaration filed under Rule 57G should not be specific to avoid the use of inputs for purposes other than declared especially when there is no provision to physically verify the inputs under Self-removal Procedure?." (iii) "Whether prior to 6.10.88, the Rule 57I was subject to the provisions of the Section 11A of Central Excise Act, 1944 or whether the amendment applies to cases prior to 6.10.88 also?" 2. Shri R. D. Negi, Ld. SDR, submitted that the requirements of filing a declaration under Rule 57G for the purpose of availing of the Modvat credit is a mandatory requirement; that as

the respondents had not declared the inputs received by them in their declaration, they were ineligible to avail of the credit of the duty paid on the inputs; that in absence of physical verification of the inputs received by the Central Excise authorities, it is but essential that the declaration is filed correctly in respect of the inputs intended to be received. He further, submitted that prior to 6.10.88, there was no time limit specified in Rule 57I for issuing the show-cause notice and importing the limitation provided in Section 11A was not warranted; that, therefore, the question of law as framed by the Commissioner are required to be referred to the Hon'ble High Court.

3. Objecting to the reference application, Shri K.K. Anand, Ld.

Advocate, submitted that the Modvat credit in respect of the impugned inputs was allowed by the Tribunal on appreciation of the facts of the case; that the Tribunal found that the impugned material received by the Respondents were used in their furnace for the purpose of manufacturing steel ingots and these were not used for re-rolling purposes; that the Tribunal also observed that if the supplier had been asked to declare the products differently, the Respondents could not be denied the benefit of the Modvat credit if the material received by them are used for the specific declared purposes. The Ld. Advocate, therefore, contended that no question of law is involved as far availing of Modvat credit is concerned. He also mentioned that no reference has been made in the case of Vimal Alloys Pvt. Ltd. v. CCE, Chandigarh Order No. A/783-86/95-NB dated 29.9.95, which was relied upon by the Tribunal at the time of passing the order. Regarding treating limitation providing under Section 11A into Rule 57I, the Ld.

advocate mentioned that the issue has now been settled by the Supreme Court, in the case of CCE, Jaipur v. Raghuvar India and as such no question of law remains to be decided by the Hon'ble High Court. The Ld. Advocate, further, submitted that as the Modvat credit has been allowed to the respondents the issue regarding time limit is not relevant or material.

4. I have considered the submissions of both the sides. I find substance in the submissions made by the Ld. Advocate for the Respondents that allowing the Modvat credit in respect of impugned goods was on the basis of appreciation of

facts particularly when the impugned inputs were used for the purpose of melting in furnace. I also observe that it has not been the case of the Departments that the Respondents had not filed modvat declaration at all. If there is any difference in the description of the inputs given by the manufacturer in his declaration filed under Rule 57G and the description given by the supplier in the duty paying documents, no legal point is involved as it is only to be appreciated on facts whether the inputs received under a different description were used for the purpose for which the declaration had been filed. I also agree with the Ld. Advocate that after the decision of the Supreme Court on the question of applying time limit specified in Section 11A of the Central Excise Act to Rule 57I of the Central Excise Rule there remains no need to refer this point to the Hon'ble High Court as the Highest Court of the land has already settled the legal point. Further, the entire amount of Modvat credit has been allowed and as such the question of limitation is not very germane to the issue in the particular matter. In view of this, reference application filed by the Revenue is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com